

12 CIV 7094

### **DECLARATION OF MARCELO P. LIMA**

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I, Marcelo P. Lima, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I have personal knowledge of each of the matters set forth below.
2. I am over the age of 18. I am a resident of Miami, Florida. I own and manage a hedge fund based in Miami.
3. I have been subpoenaed by the Securities and Exchange Commission ("SEC") to produce documents and to provide sworn testimony in its investigation of trading in Burger King securities. At the request of SEC I make this declaration in lieu of providing sworn testimony.
4. I met Waldyr Prado ("Prado") in Miami in 2009 playing squash. We became acquainted after I heard Prado speaking Portuguese, which is my first language. Although I never became his client, we formed a professional friendship. I learned that Prado was a stock broker at Wells Fargo Advisors in Miami. Between 2009 and August 2012 Prado and I were in contact with each other by telephone, email, and in person. As a result of our friendship, Prado told me that he regularly traveled to Brazil, usually to meet with clients there.
5. On May 17, 2010, Prado and I were emailing each other about companies and their stocks. Prado used his Wells Fargo Advisors email to communicate with me on that date. In one of the emails dated May 17, 2010, Prado wrote to me in Portuguese that he was in Brazil with information that could not be sent by email that was "É imperdivel," which I translated into English as "should not be missed" (as in "you can't miss it"), and Prado gave me his Brazilian cell phone number. I thought it was odd that Prado would write that he had information that could only be provided verbally because I believe that if something can be talked about over the phone, it could be written about too. Attached hereto as Exhibit 1 are true and correct copies of my emails to and from Prado on May 17, 2010, which I produced to the SEC in response to its subpoenas.
6. After I received Prado's email on May 17, 2010 that he had information that "should not be missed," we spoke by telephone that day. During our phone conversation, Prado told me on May 17, 2010 that he had information that Burger King was going to be taken private

by a company called 3G. Prado did not say how he knew that. I told Prado that, if the information that 3G was going to take Burger King private was true, Prado should not trade on that information and that Prado's clients should not trade on that information.

7. On August 31, 2010, I received a Wall Street Journal market alert that Burger King was in talks to be taken private by a private equity group. On September 2, 2010, I learned that it had been announced that 3G Capital made a tender offer for Burger King's outstanding shares.

8. I did not trade Burger King securities at any time before the September 2, 2010 announcement (I bought a small quantity of shares after the announcement on September 2, 2010). I believed that if I had traded Burger King securities on or after May 17, 2010, after hearing what Prado told me on that date that 3G was going to take Burger King private (but before it was publicly announced to the market), it would have been illegal for me to have done so.

9. On August 10, 2012, I received subpoenas from the SEC requiring me and my company to produce documents in the SEC's Burger King investigation. When I read the requests for documents accompanying the subpoenas I saw that the SEC asked for documents about Burger King and emails I exchanged with Prado. Before I received the subpoenas, I had plans to get together with Prado on August 10, 2012 at a restaurant in Miami. After I saw Burger King and Prado's name mentioned in the request for documents accompanying the SEC's subpoenas I called Prado to cancel our meeting, but Prado encouraged me to meet him at the restaurant anyway.

10. When I met Prado at the restaurant around 4:30 p.m. on August 10, 2012 he told me that we wanted to tell me his side of the story. Prado had documents with him including an article from a newspaper in Brazil, which he showed to me. I never saw or heard about that article before Prado showed it to me at the restaurant. Prado told me he wanted me to know that he had been to Los Angeles to testify before the SEC, he presented the SEC with that article, and

that he believed Burger King was a good investment in 2010. Prado's statements made me uncomfortable and I left the restaurant after about five minutes.

11. Later in the evening of August 10, 2012, I called Prado and told him to delete my email from his contact list.

12. I have not talked to or heard from Prado since August 10, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 19, 2012

Miami, Florida

  
\_\_\_\_\_  
Marcelo P. Lima

**EXHIBIT 1**

# EXHIBIT 1

## Pharma...

Messages in thread 3

Mon May 17 2010 09:36:04 GMT-0600 (MDT)

ID: 128a6e859b43fe79

From: "Marcelo P. Lima" <mpl4@cornell.edu>

To: "Prado, Waldyr" <waldyr.prado@wellsfargoadvisors.com>

CC:

Pfizer, Sanofi-Aventis e AstraZeneca == very cheap.

Marcelo P. Lima

(305) 898-7612

MPL4@cornell.edu

Mon May 17 2010 15:03:49 GMT-0600 (MDT)

ID: 128a814e9f1ae601

From: "Prado, Waldyr" <waldyr.prado@wellsfargoadvisors.com>

To: "Marcelo P. Lima" <mpl4@cornell.edu>

CC:

To no Brasil com uma informacao que nao da pra mandar por e-mail.

E imperdivel

Meu cel aqui e 11-8108-5050.

## REDACTED

From: mplima4@

[mailto:mplima4@

On Behalf Of Marcelo P. Lima

Sent:

Monday, May 17, 2010 11:36 AM

To: Prado, Waldyr

Subject:

Pharma...

Pfizer, Sanofi-Aventis e AstraZeneca == very cheap.

Marcelo P. Lima

(305) 898-7612

MPL4@cornell.edu

MPL/HH-004560

# EXHIBIT 1

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Mon May 17 2010 15:50:28 GMT-0600 (MDT)  
ID: 128a83f1af9cb090  
From: "Marcelo P. Lima" <[mp4@comell.edu](mailto:mp4@comell.edu)>  
To: "Prado, Waldyr" <[waldyr.prado@wellsfargoadvisors.com](mailto:waldyr.prado@wellsfargoadvisors.com)>  
CC:

Annual report da Lafarge em anexo. Free cash flow na pagina 3. E olha esse sovereign debt report. É o melhor que já vi.

Marcelo P. Lima  
(305) 898-7612  
[MPL4@comell.edu](mailto:MPL4@comell.edu)

**MPL/HH-004561**

# EXHIBIT 1

On Mon, May 17, 2010 at 5:03 PM, Prado, Waldyr [waldyr.prado@wellsfargoadvisors.com](mailto:waldyr.prado@wellsfargoadvisors.com) wrote:

To no Brasil com uma informacao que nao da pra mandar por e-mail.  
E imperdivel  
Meu cel aqui e 11-8108-5050.

## REDACTED

From: [mplima4@](mailto:mplima4@)  
[mailto:[mplima4@](mailto:mplima4@)] On Behalf Of Marcelo P. Lima  
Sent:  
Monday, May 17, 2010 11:36 AM  
To: Prado, Waldyr  
Subject:  
Pharma...

Pfizer, Sanofi-Aventis e AstraZeneca == very cheap.  
Marcelo P. Lima  
(305) 898-7612  
[MPL4@cornell.edu](mailto:MPL4@cornell.edu)

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# EXHIBIT 1

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